

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. CC 2012-38

STEVEN M. POLATIS
2069 E. Feldspar Ct.
Boise, ID 83712

Certificate of Registration to Practice
Optometry No. 10401

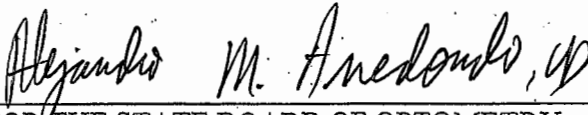
Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 12, 2014.

It is so ORDERED February 10, 2014.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

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2 KENT D. HARRIS
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9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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Boise, ID 83712

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Certificate of Registration to Practice**
15 **Optometry No. 10401**

16 Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Mona Maggio ("Complainant") is the Executive Officer of the State Board of
22 Optometry ("Board"), Department of Consumer Affairs. She brought this action solely in her
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, by Leslie A. Burgermyer, Deputy Attorney General.

25 2. Steven M. Polatis ("Respondent") is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

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3. On or about March 15, 1995, the State Board of Optometry issued Certificate of Registration to Practice Optometry No. 10401 to Respondent. The Certificate of Registration to Practice Optometry was in full force and effect at all times relevant to the charges brought in Accusation No. CC 2012-38 and will expire on July 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. CC 2012-38 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 26, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. CC 2012-38 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. CC 2012-38. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. CC 2012-38, agrees that cause exists for discipline and hereby surrenders his Certificate of Registration to Practice Optometry No. 10401 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Certificate of Registration to Practice Optometry without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the State Board of Optometry.

Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Certificate of Registration to Practice Optometry No. 10401, issued to Respondent Steven M. Polatis ("Respondent") is surrendered and accepted by the State Board of Optometry ("Board").

1. The surrender of Respondent's Certificate of Registration to Practice Optometry and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as an Optometrist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. CC 2012-38 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$2,252.50 prior to issuance of a new or reinstated license.


6. If Respondent should ever apply or re-apply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. CC 2012-38 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

7. Respondent shall not apply for licensure or petition for reinstatement for one (1) year from the effective date of the Board's Decision and Order.

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DATED:


STEVEN M. POLATIS
Respondent

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated:

11/25/2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General



LESLIE A. BURGERMYER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. CC 2012-38

1 KAMALA D. HARRIS
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2 KENT D. HARRIS
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3 LESLIE A. BURGERMYER
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A C C U S A T I O N

14 Certificate of Registration to Practice
Optometry No. 10401

15
16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the State Board of Optometry ("Board") Department of Consumer
22 Affairs.

23 2. On or about March 15, 1995, the State Board of Optometry issued Certificate of
24 Registration to Practice Optometry Number 10401 to Steven M. Polatis ("Respondent"). The
25 Certificate of Registration to Practice Optometry was in full force and effect at all times relevant
26 to the charges brought herein and will expire on July 31, 2015, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 3090 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to license holders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Section 3110 of the Code states, in pertinent part:

The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self

administration of any of the substances referred to in this subdivision, or any combination thereof.

7. Code section 490 states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

REGULATORY PROVISIONS

8. California Code of Regulations ("CCR"), title 16, section 1517 states, in pertinent part:

For the purpose of . . . suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

(d) Any violation of the provisions of chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code).

DRUGS

9. **Ambien**, a brand of zolpidem tartrate, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1).

10. **Xanax**, a brand of alprazolam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1).

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative-law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction)**

8 12. Respondent is subject to disciplinary action under Code section 3110, subdivision (k),
9 on the grounds of unprofessional conduct and Code section 490, in that Respondent was
10 convicted of crimes that are substantially related to the qualifications, functions, and duties of a
11 licensed optometrist, as follows:

12 13. On or about January 14, 2010, in the case titled *State of Idaho v. Steven Polatis*,
13 District Court of the Fourth Judicial District, Ada County, Case No. MD-09-19898, Respondent
14 pled guilty to violating Idaho Code section 18-8004 M (driving under the influence), a
15 misdemeanor. Respondent's blood alcohol concentration ("BAC") measured 0.12 percent. The
16 underlying circumstances are as follows: On or about October 2009, Respondent admittedly
17 drank alcoholic beverages at a pub located in Boise, Idaho, and then drove his vehicle while
18 under the influence of alcohol.

19 a. Initially, Respondent's plea was a "withheld judgment" subject to his successful
20 completion of informal probation terms and conditions by January 14, 2011. Respondent violated
21 his probation on December 20, 2010, as described hereinbelow, and judgment was entered.

22 14. On or about June 28, 2011, in the case titled *State of Idaho v. Steven M. Polatis*,
23 District Court of the Fourth Judicial District, Ada County, Case No. MD-2010-0021529,
24 Respondent pled guilty to violating Idaho Code section 18-8004M (driving under the influence), a
25 misdemeanor. The controlled substance Ambien was detected in Respondent's urine test results.

26 a. The underlying circumstances are: On or December 20, 2010, a citizen reported to
27 the Boise Police Department he had observed Respondent driving recklessly possibly due to
28 driving under the influence. A police officer responded to the scene and observed Respondent

1 driving dangerously and recklessly including driving on the sidewalk, crossing into oncoming
2 traffic lanes, nearly hitting parked vehicles, and ran a stop sign. Respondent failed to stop for the
3 officer so the officer followed Respondent to his home. The officer observed Respondent collide
4 into his planter and porch column. After exiting his vehicle, the officer observed Respondent had
5 objective signs and symptoms indicative of alcohol intoxication including the odor of alcoholic
6 beverage, slurred speech, impaired memory, and glass/bloodshot eyes. Respondent admitted to
7 drinking alcoholic beverage(s). A second officer conducted a drug examination on Respondent
8 and Respondent admitted to using Ambien and Xanax earlier that day.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Used Alcohol And Drugs – Danger To
11 Self Or Others)**

12 15. Respondent is subject to disciplinary action under Code section 3110, subdivision (I),
13 and CCR, title 16, section 1517, in that on or about October 2009 and December 10, 2010, while
14 he was registered as an optometrist, Respondent used alcoholic beverages and controlled
15 substances in a manner dangerous or injurious to himself and others to the extent that the use
16 impairs his ability to conduct with safety to the public the practice of optometry, as more fully set
17 forth in paragraph 12, above. Such acts evidence Respondent's present or potential unfitness to
18 perform the functions authorized by his certificate of registration in a manner consistent with the
19 public health, safety, or welfare, within the meaning of CCR, title 16, section 1517.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Committed Crimes and Acts Violating Law and Regulation)**

22 16. Respondent is subject to disciplinary action under Code section 3110, subdivision
23 (a), on the grounds of unprofessional conduct, in that Respondent violated or attempted to violate,
24 directly or indirectly assisted in or abetted the violation of, or conspired to violate any provision
25 of the Optometry Practice Act section 3000, et seq., or any of the rules and regulations adopted by
26 the Board, as set forth in paragraphs 12 and 13, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Certificate of Registration to Practice Optometry Number 10401, issued to Steven M. Polatis.
2. Ordering Steven M. Polatis to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: September 19, 2013


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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